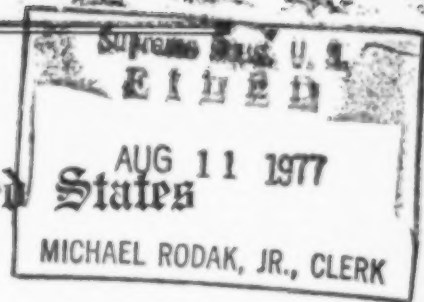


IN THE
Supreme Court of the United States
OCTOBER TERM, 1977



No. 77-3

JOHN GISH,

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE
BOROUGH OF PARAMUS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court
of New Jersey

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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Questions Presented

1. Whether Respondent's request that Petitioner undergo a psychiatric examination, pursuant to a constitutionally valid statutory provision designed to assist

boards of education in determining a teacher's fitness to teach, and based upon Respondent's judgment that Petitioner's conduct evidenced deviation from normal mental health, violated Petitioner's First Amendment Rights.

2. Whether Respondent's denial of Petitioner's request to confront and cross-examine medical experts consulted by Respondent as additional sources of opinion for Respondent's own use in making its independent judgment that Petitioner's conduct evidenced deviation from normal mental health, violated Petitioner's rights of due process of law.

Counter-Statement of the Case

Petitioner John Gish has been employed by the Paramus Board of Education (the "Respondent") since 1965. On June 14, 1972, Petitioner assumed the presidency of the Gay Activist Alliance of New Jersey. Subsequent thereto, as a result of his assumption of the presidency of the Gay Activist Alliance of New Jersey, and as a result of his efforts to promote the cause of the Gay Liberation Movement, Petitioner was the subject of a large volume of publicity, in both the local and national media.

As a result of Petitioner's conduct, as observed by Respondent Board, and of the publicity attendant upon Petitioner, which publicity was a natural and foreseeable consequence of the activities of Petitioner in promoting the cause of the Gay Liberation Movement, a meeting was held on July 10, 1972 at the office of the Respondent Board's Superintendent of Schools. At said meeting a hypothetical question was posed to Dr. Richard Roukema, School Consulting Psychiatrist, who was asked to state whether, in his professional opinion, and with a reasonable degree of medical certainty, the course of action

undertaken by Petitioner would have a tendency to result in a strong possibility of potential psychological harm to the students of the Paramus School District as a result of their continued association with Petitioner. Dr. Roukema indicated an affirmative answer to this question. Thereafter, Respondent Board, by Resolution dated July 10, 1972 (PC-17a), resolved that, whereas, in its judgment, the actions of Petitioner constituted evidence of deviation from normal mental health, Petitioner be required to undergo a psychiatric examination pursuant to the terms of N.J.S.A. 18A:16-2 (PC-60a).

On August 10, 1972, Petitioner instituted a class action in the Superior Court of New Jersey challenging the constitutionality of N.J.S.A. 18A:16-2, which action was resolved by the decision of the Superior Court, *Kochman and Gish, et al. v. Keansburg Board of Education and Paramus Board of Education, et al.*, 124 N.J. Super. 203, 305 A. 2d 807 (Ch. Div. 1973), upholding the statute in question as constitutional and mandating the use of certain standards and guidelines prior to the application of N.J.S.A. 18A:16-2, namely, that before a teacher is required to submit to a psychiatric examination, the teacher is entitled to a statement of reasons for such examination and the teacher must be afforded the right to be heard by the board before the statute is applied.

Subsequent to the decision upholding the statute's constitutionality, Respondent Board, by Resolution adopted on June 28, 1973 (PC-20a-21a), reaffirmed its previous Resolution that Petitioner undergo a psychiatric examination. Pursuant to the Opinion of the Court in *Kochman v. Keansburg, supra*, a Statement of Reasons for Respondent Board's request that Petitioner undergo a psychiatric examination was presented to him by letter dated June 7, 1973 (PC-18a-20a), and an additional State-

ment of Reasons was presented to Petitioner by letter dated August 9, 1973 (PC-21a-23a). Thereafter, hearings were held by Respondent, on August 9, 1973 and August 22, 1973. At said hearings Petitioner was present, was represented by counsel of his own choosing, was afforded the right to make statements, and have others (including experts) make statements on his own behalf, to respond, to refute and challenge as inaccurate the Statements of Reasons furnished Petitioner, and to attempt to convince Respondent Board of the unreasonableness or incorrectness of its judgment, namely, that Petitioner's conduct evidenced harmful, significant deviation from normal mental health affecting Petitioner's ability to teach, discipline or associate with children of the age subject to Petitioner's control in the Paramus School District, and of its decision, namely, that Petitioner undergo a psychiatric examination.

At such hearings, Petitioner requested, and was denied, the opportunity to confront and cross-examine Dr. Richard Roukema, Paramus School Consulting Psychiatrist, and Dr. Edward Lowell, Psychiatrist. Respondent Board had presented Statements of Hypothetical Facts to Drs. Roukema and Lowell and sought their opinions as to these hypothetical facts, merely to test its own independent judgment that Petitioner's conduct was such that an examination was in order. In the Board's view, the responses of the psychiatrists had assisted the Board by adding some objective medical advice which did buttress the Board's lay judgment that Petitioner evidenced deviation from normal mental health as defined in *Kochman v. Keansburg, supra*.

Subsequent to the conclusion of such hearings, by letter dated August 28, 1973 (PC-30a), Petitioner was once again directed to undergo a psychiatric examination, pursuant

to the terms of N.J.S.A. 18A:16-2 and N.J.S.A. 18A:16-3, and based upon Respondent Board's continuing judgment that Petitioner's conduct evidenced a harmful, significant deviation from normal mental health affecting his ability to teach, discipline or associate with students of the Paramus Public Schools.

Thereafter, a Petition of Appeal dated August 28, 1973 (PC-30a) from the directive of the Board was filed by Petitioner with the Commissioner of Education of New Jersey, resulting in a decision of the Commissioner of Education (PC-14a) upholding as lawful and reasonable Respondent's procedures and directive and ordering Petitioner to submit to a psychiatric examination. This decision was affirmed by decision of the State Board of Education on June 26, 1975, and by the Appellate Division of the Superior Court of New Jersey, by decision dated November 4, 1976, 145 N.J. Super. 96, 366 A. 2d 1337 (App. Div. 1976) (PC-2a). A Petition for Certification was denied by the Supreme Court of New Jersey on March 15, 1977 (PC-1a).

ARGUMENT

- I. Respondent's request that Petitioner undergo a psychiatric examination, pursuant to a constitutionally valid statutory provision designed to assist Boards of Education in determining a teacher's fitness to teach, and based upon respondent's judgment that Petitioner's conduct evidenced deviation from normal mental health, in no respect violated Petitioner's First Amendment Rights.**

Respondent contends that the decision of the Appellate Division of the Superior Court of New Jersey (by which it was determined that the action of Respondent directing that Petitioner undergo a psychiatric examination pursuant to the provisions of N.J.S.A. 18A:16-2 and N.J.S.A. 18A:16-3 satisfied in all respects Petitioner's constitutional rights under the First and Fourteenth Amendments to the United States Constitution) is in accord in all respects with all applicable decisions and precedents of this Court. Respondent further contends that Petitioner has failed to advance any "special and important reason" pursuant to Supreme Court Rule 19 for this Court to exercise its discretion to issue the Writ of Certiorari, and that, as a result, the Petition must be denied. *National Labor Relations Board v. Pittsburgh Steamship Company*, 340 U.S. 498, 502 (1951); *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 73-4 (1955). Respondent contends that the lack of such "special and important reason", based upon the absence of a question of public importance, *Pittsburgh Steamship*, 340 U.S. at 502, is supported by the denial, pursuant to Rule 2:12-4 of the Rules Governing the Courts of the State of New Jersey, of Petitioner's Petition for Certification to the New Jersey Su-

preme Court (PC-1a), which Rule, in language similar to this Court's decisions applying Rule 19, provides for the granting of Certification "... only if the appeal presents a question of general public importance. . . ." By its denial of the Petition for Certification, the Supreme Court of New Jersey found there to be no such question of general public importance.

The decision of the Court below conclusively established that Respondent's directive to Petitioner to undergo a psychiatric examination pursuant to N.J.S.A. 18A:16-2 was the result of the fair and reasonable judgment of the Board, based upon credible and substantially undisputed evidence, that the course of conduct of Petitioner evidenced a harmful, significant deviation from normal mental health affecting Petitioner's ability to teach, discipline or associate with children of the age of the children subject to Petitioner's control in the school district.

Respondent contends, and the Court below agreed, that its judgment was made consistent with the compelling state interest expressed by the Superior Court of New Jersey in *Kochman v. Keansburg*, *supra*, as follows:

"The legislature is concerned with protecting school children from the influence of unfit teachers. Protection of school children from teachers who have shown evidence of harmful, significant deviation from normal mental health is without question not only a valid legislative concern but one classified as a compelling state interest." (305 A.2d at 812).

Indeed, the overriding and compelling state interest in determining the fitness of teachers, as expressed in *Kochman*, has long been recognized by this Court. *See, e.g., Adler v. Board of Education of the City of New York*, 342 U.S. 485 (1952).

Petitioner, however, in seeking to assert some "special and important reason" why this Court should review the decision of the Court below, argues that Respondent's directive that he undergo a psychiatric examination to enable it to determine his fitness, and to confirm or disprove its judgment, results in an unconstitutional infringement upon First Amendment rights, which rights, Petitioner asserts, may never be suborned to the will of a governmental agency, and results, Petitioner contends, in the failure of the Court below "to protect the integrity of its own process." (PC-5). Respondent contends that such vague and meaningless assertion by Petitioner fails to advance any special or important reason for this Court to review the decision of the Court below.

The decision of the Court below makes abundantly clear (PC-8a) that Petitioner's contention ignores the well established principle frequently enunciated by this Court, namely, that constitutional rights, including the right to speech, are not absolute, but that a compelling state interest may justify the incidental invasion or inhibition of even First Amendment rights. *See, e.g., United States v. O'Brien*, 391 U.S. 367 (1968); *DeGregory v. Attorney General of The State of New Hampshire*, 383 U.S. 825 (1966); *Younger v. Harris*, 401 U.S. 37 (1971); *Branzburg v. Hayes*, 408 U.S. 665 (1972). In the matter *sub judice*, Respondent contends that the existence of such a compelling state interest, namely, the protection of school children from the influence of unfit teachers, cannot possibly be denied.

Petitioner's further assertion that Respondent, in arriving at its judgment that Petitioner's conduct evidenced deviation from normal mental health, failed to observe any conduct involving classroom activities and, that, as a result, fundamental notions of justice have, in some un-

stated manner, been offended, likewise ignores well established principles enunciated by this Court which recognize that a board of education, in determining the fitness of a teacher, may have valid concerns extending beyond the classroom. As stated by this Court in *Shelton v. Tucker*, 364 U.S. 479 (1960):

“There can be no doubt of the right of a State to investigate the competence and fitness of those whom it hires to teach in its schools, as this Court before now has had occasion to recognize.

‘A teacher works in a sensitive area in a school-room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern.’ *Adler v. Board of Education*, 342 U.S. 485, 493, 96 L ed 517, 524, 72 S.Ct. 380, 27 ALR2d 472. There is ‘no requirement in the Federal Constitution that a teacher’s classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors’ *Beilan v. Board of Education*, 357 U.S. 399, 406, 2 L ed 2d 1414, 1420, 78 S.Ct. 1317.” (364 U.S. at 485).

As the Court below has determined, quoting from the earlier decision of the Commissioner of Education and consistent with the above expression by this Court, Respondent’s directive that Petitioner undergo a psychiatric examination was made by individuals “concerned with Petitioner’s fitness to be a teacher in intimate contact with numbers of impressionable, adolescent pupils” (PC-10a).

Respondent contends that the cases cited by Petitioner, by which Petitioner seeks to equate the Board’s action in the matter *sub judice* with actions designed to impose sanctions or penalties upon teachers, or to retaliate

against teachers for the exercise of free speech, are inapposite. Rather, the statute under which Respondent acted represents a considered legislative mechanism providing to a local board of education the ability to apply the expertise of a psychiatrist to confirm or disprove its judgment, namely, that it has observed signs of what it considers a harmful, significant deviation from normal mental health.¹

The decision of the Court below expressly recognizes that the requirement that Petitioner subject himself to a psychiatric examination can hardly be classified as a penalty or a sanction (PC-11a) resulting in the deprivation of an interest in liberty or property, *The Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), such as non-renewal of employment made by reason of the exercise of constitutionally protected First Amendment rights, absent an overriding interest on the part of the employer. *Mt. Healthy City School District Board of Education v. Doyle*, — U.S. —, 50 L. Ed. 2d 471, 97 S.Ct. 568 (1977). Rather, Respondent contends that, as the Court below has held, the Board's requirement that Petitioner undergo a psychiatric examination must be viewed as a reasonable exercise of the Board's judgment in meeting its mandated duty of determining the fitness of teachers. Such a directive fully protects, and in no respect violates, Petitioner's First Amendment freedoms.

Based upon the foregoing, Respondent contends that Petitioner has failed to advance any special and important reason for this Court to review the decision of the Court below.

¹ The Court in *Kochman v. Keansburg*, *supra*, found that, "... although a board of education may observe signs of what it considers a harmful, significant deviation, it does not have the expertise to question the teacher on the matter itself but must rely on the expertise of a psychiatrist." 305 A.2d at 812.

I I. Petitioner's inability to confront and cross-examine medical experts consulted by Respondent as additional sources of opinion for Respondent's own use in making its independent judgment as to Petitioner's conduct in no way violated Petitioner's due process rights.

Petitioner's argument that Respondent has denied to Petitioner guaranteed rights of procedural due process, by its denial of Petitioner's request to confront and cross-examine two medical experts consulted by the Board in arriving at *its own* judgment that Petitioner's conduct evidenced deviation from normal mental health, rests, initially, upon Petitioner's implicit characterization of the role of such experts, which, upon analysis, can clearly be seen to be totally unfounded. Petitioner himself admits, and the Court below acknowledged in its decision (PC-11a), that he was not entitled to the full sweep of due process rights as contemplated by the Fourteenth Amendment at the hearings conducted by Respondent to afford Petitioner an opportunity to be heard prior to his undergoing the psychiatric examination directed by the Board. Petitioner asserts, however, that his inability at such hearings to cross examine the medical experts consulted by the Board as additional sources of opinion for its own use in arriving at its own independent judgment ignores that element of due process protection which requires an "impartial decision-maker." This assertion ignores and confuses the simple fact that Respondent Board, and not such medical experts, was the "decision-maker" in the matter *sub judice*, and that any required standard of impartiality must be applied to Respondent, rather than to any other person. No claim of lack of impartiality on the part of Respondent is even asserted.

Further, Petitioner's assumption of some "tainted" future involvement by the medical experts consulted by Respondent, or, indeed, any assumption of future involvement at all by such experts is simply unfounded. Since the Board was the only "decision-maker" in this case, the ability or inability of Petitioner to confront and cross-examine such experts is totally irrelevant to any constitutional guarantee of an impartial decision-maker and any procedural due process rights. As the record below amply establishes, Petitioner was afforded, at the hearings granted to him by Respondent, the unfettered and unlimited opportunity to present evidence and witnesses on his own behalf, and to inquire, explore, debate and challenge the Board's judgment with those individuals who were, in fact, the makers of such decision, namely, the members of the Board itself, all of whom were present at such hearing.

As is clear from the language of the statute under which Respondent acted, N.J.S.A. 18A:16-2, and under which a board may require a psychiatric examination whenever, *in the judgment of the board*, an employee shows evidence of deviation from normal mental health, such statute in no way obligated Respondent to enlist the independent opinion of any other source in arriving at its own independent judgment that an employee showed deviation from normal mental health. Rather, as the Commissioner of Education of New Jersey has found (PC-45a), Respondent sought opinions from two medical experts so as to insure that there was a reasonable basis for *its* judgment, but, significantly, Respondent did not wholly rely upon the medical experts' responses to the Statements of Hypothetical Facts and did make its own independent judgment, this pursuant to the statutory mandate and the compelling state interest which formed the legislative basis for the statute, that Petitioner should

undergo a psychiatric examination. Respondent contends in the matter *sub judice* that the Court below has correctly determined that Petitioner was afforded every reasonable opportunity, consistent with the judicial standards of due process enunciated by this Court, to challenge such judgment of Respondent, and to seek to convince Respondent of the erroneous nature or unreasonableness of such judgment.

Respondent contends that, given the particular and unique facts and circumstances in the matter *sub judice*, and given Petitioner's own admission that he was not entitled to the full sweep of due process rights as contemplated by the Fourteenth Amendment, there is no reasonable basis for the application in this case of a standard of due process which would give rise to a right to cross-examine medical experts (i) who have merely given to Respondent opinions, confirming Respondent's own independent judgment, based upon facts contained in Statements of Hypothetical Facts, likewise furnished to Petitioner, which were, with but one exception, not challenged by Petitioner as to their factual accuracy (PC-7a), and (ii) who possessed *no* knowledge relevant to the instant matter beyond the undisputed facts therein contained.

The finding by the Court below (that, as an element of procedural due process protection, Petitioner has not been denied an impartial decision-maker) is in no way affected or altered by Petitioner's unfounded assumption that the medical experts in question ". . . will, if the board has its way, examine Mr. Gish" (PC-12). This fact is clear from a reading of the statute under which Respondent acted, N.J.S.A. 18A:16-3 (quoted in full in the decision of the Appellate Division, PC-3a-4a), which provides to Petitioner the right to have the psychiatric examination conducted by a physician or institution of

Petitioner's own choosing, thus rendering totally meaningless Petitioner's procedural due process objection as to impartiality, even if one were to assume *arguendo* that any such physician must satisfy some standard of impartiality. The record below makes clear that Petitioner has chosen to ignore his own ability to "cure" such a perceived (and, in the view of Respondent and the Courts below, unfounded) deprivation of procedural due process by exercising his clear statutory right to choose the physician to conduct the examination in question.

Petitioner further seeks to assert that the standard and degree of due process necessarily to be afforded in the matter *sub judice* must be determined in light of Petitioner's having suffered an alleged "stigma" destructive of both property and liberty rights within the meaning of the Fourteenth Amendment, which "stigma", Petitioner contends, attaches to the Respondent's initial determination (that Petitioner undergo a psychiatric examination) and "creates a disability that *might* foreclose his ability to obtain employment opportunities in the future." (emphasis added) (PC-10). Petitioner, after having admitted that he was not entitled to the full sweep of procedural due process rights, but without suggesting any specific procedural rights to which he was not entitled, fails to set forth any manner in which the decision of the Court below is in conflict with, or not contemplated by, the traditional and well-established constitutional principles set forth by this Court with regard to the flexible standard of procedural due process rights applicable to a particular situation, which standards are dependent upon a determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by governmental action. *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886 (1961); *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

In the instant matter Respondent has asserted, and the Court below has agreed, that there is no right or privilege *not* to undergo a psychiatric examination, and, further, that the requirement that Petitioner undergo such examination can hardly be classified as a penalty or sanction. Rather, such requirement must be viewed as a reasonable exercise of the Board's judgment in carrying out its mandated duty of determining the fitness of teachers (PC-11a). It is further significant, in light of this Court's well established principles of the interests of liberty and property, that the mere submission by Petitioner to the examination in question clearly has *no* impact or effect upon Petitioner's status as a teacher (PC-12a). Nowhere does Petitioner seek to assert that the mere undergoing of the examination in question results, for instance, in Petitioner's dismissal from his position, or in any other impact upon Petitioner's employment status. Respondent contends that Petitioner's argument that the determination that Petitioner undergo an examination creates a disability that "*might* foreclose his ability to obtain employment opportunities in the future" is thus inappropriate and, at best, premature. Thus, Respondent contends, the instant matter is clearly distinguishable from the decisions of this Court to which Petitioner refers, decisions in which the imposition of a sanction or penalty, clearly involving the deprivation of liberty or property, justified protection in the form of the full sweep of due process rights prior to the imposition of such sanction or penalty. See, e.g., *Pickering v. Board of Education*, 391 U.S. 563 (1968) (dismissal of a teacher); *Perry v. Sindermann*, 408 U.S. 593 (1972) (refusal to renew a teacher's contract). As a result, the decision of the Court below in the matter *sub judice* requires no review by this Court in light of such previous decisions by this Court.

In the matter *sub judice*, Petitioner asserts that to allow him to cross-examine the medical experts consulted by Respondent in making *its own independent* determination would, in some unstated fashion, preclude a stigma from being imposed as a direct result of procedural due process violations. Even if such a stigma were to exist, which the Court below did *not* find, Petitioner's position that such a stigma would destroy a constitutionally guaranteed "liberty", thus requiring, if not the full sweep of due process rights, at least, in Petitioner's view, the right to cross-examine certain experts consulted by Respondent to insure the reasonableness of its own independent judgment, is clearly contrary to (i) the recent decision of this Court in *Paul v. Davis*, 424 U.S. 693, *reh den* 425 U.S. 985 (1976), and (ii) the well established judicial expressions of this Court as to the purpose for granting the right to cross-examination as an element of procedural due process.

Respondent contends that the decision of the Court below is consistent in all respects with this Court's recent decision in the case of *Paul v. Davis*, *supra*, wherein the Court reviewed its prior decisions, particularly with respect to the range of protected interests enunciated by this Court in *Board of Regents v. Roth*, *supra*, and specifically the issue of whether the infliction of a stigma to one's reputation, standing alone, is either a "liberty" or "property" interest which, by itself, is sufficient to invoke the procedural protections of the Due Process Clause. In *Paul*, *supra*, this Court concluded that an interest in reputation alone, without an accompanying alteration or extinguishment of an additional, more tangible, right or status recognized and protected by state law, is not sufficient to invoke *any* of the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment.

Respondent submits that the "stigma" alleged by Petitioner, even if assumed *arguendo* to exist, falls squarely within the contemplation of this Court's decision in *Paul, supra*, and is therefore entitled, if to any protections, to no greater procedural due process protections than those previously granted Petitioner pursuant to the mandates of state law.² This conclusion is clear since, as the Court below found, no such accompanying protected right recognized by state law has been altered or extinguished by the Respondent's directive. In this regard, the Court below stated: "The submission by Gish to a psychiatric examination takes nothing from him except his time. His status as a teacher continues with full rights under the law. Therefore, from the standpoint of his being deprived of a right or privilege it is minimal, except as it may loom in his mind." (PC-12a). Respondent thus contends that Petitioner has not advanced any special reason to warrant a review by this Court of the decision below, especially in light of the recent holding of this Court in *Paul, supra*. See also *Bishop v. Wood*, 426 U.S. 341 (1976); *Ingraham v. Wright*, — U.S. —, 51 L. Ed. 2d 711, 97 S.Ct. — (1977).

Petitioner has, in fact, failed to advance any cogent reason why his inability to cross-examine two medical experts consulted by the Board prejudiced his right and opportunity "to be heard". Petitioner has merely asserted that such an opportunity is necessary to avoid the imposition of a "stigma" (PC-12). Respondent contends that, given the particular facts and circumstances presented

² With regard to the procedural due process rights held to be required by the terms of the statute in question, the Court in *Kochman v. Keansburg, supra*, held that before a teacher is ordered to submit to a psychiatric examination he is entitled to a statement of the reasons for such examination and to an opportunity to be heard. 305 A.2d at 812.

in the instant matter as to the role of the two medical experts consulted by the Board, and, further, given the undisputed holding of the Court below, namely, that the facts presented to such experts were, with but one exception, not challenged by Petitioner as to their accuracy (PC-40a), the decision of the Court below is in full accord with this Court's decisions as to the circumstances under which the rights of confrontation and cross-examination are mandated.

In the matter *sub judice* Respondent, in fact, sought and received the opinion of two medical experts, which opinions were based on Statements of Hypothetical Facts presented to them. Respondent sought such opinions for the purpose of insuring that there was a reasonable basis for Respondent's judgment, which judgment, pursuant to the statute under which the Board acted in this matter, N.J.S.A. 18A:16-2, is the only judgment upon which Respondent may base the exercise of its statutory right. As a result, such medical experts, possessing no independent facts and no facts with one minor exception challenged by Petitioner as to accuracy, and being incapable of offering any testimony dependent upon memory or relevant in any respect to any truth determining process in the instant matter, do not constitute adverse witnesses against Petitioner. Rather, they were merely the source of additional opinions sought by Respondent for its own use in making its own independent judgment. Such facts, which formed the basis of the decision of the Court below, do no violence to this Court's consistent application of frequently considered constitutional principles as to the circumstances which give rise to the necessity of confrontation and cross-examination. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1970) (requiring the opportunity to confront and cross-examine adverse witnesses where important decisions turn on questions of fact); *Chambers v.*

Mississippi, 410 U.S. 284 (1973) (requiring confrontation and cross-examination to help assure the accuracy of the truth-determining process); *Greene v. McElroy*, 360 U.S. 474 (1959) (requiring confrontation and cross-examination where evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or person motivated by malice, vindictiveness, intolerance, prejudice or jealousy); and *Richardson v. Perales*, 402 U.S. 389 (1971) (requiring confrontation and cross-examination where factual credibility and veracity are at issue).

Respondent thus contends that further examination by the Supreme Court of the United States of the reasonableness of the hearings afforded to Petitioner by Respondent, submitted for review under the label of a denial of procedural due process rights, is clearly not warranted.

CONCLUSION

For the foregoing reasons we respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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